

# Internal Revenue bulletin

Bulletin No. 1998-18  
May 4, 1998

## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### INCOME TAX

Rev. Rul. 98-23, page 5.

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for May 1998.

Notice 98-27, page 14.

Electricity produced from certain renewable resources; calendar year 1998 inflation adjustment factor and reference prices. This notice announces the calendar year 1998 inflation adjustment factor and reference prices for the renewable electricity production credit under section 45 of the Code.

### EMPLOYEE PLANS

REG-243025-96, page 18.

Proposed regulations would provide guidance on the circumstances under which a cafeteria plan participant may revoke an existing election and make a new election during a period of coverage. A public hearing will be held on Tuesday, May 5, 1998.

Notice 98-26, page 14.

Weighted average interest rate update. Guidelines are set forth for determining for April 1998, the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for purposes of the full funding limitation of section 412(c)(7) of the Code as amended by the Omnibus Budget Reconciliation Act of 1987 and by the Uruguay Round Agreements Act (GATT).

### EXEMPT ORGANIZATIONS

Announcement 98-36, page 18.

A list is given of organizations now classified as private foundations.

### GIFT TAX

Rev. Rul. 98-21, page 7.

Transfer of nonstatutory stock option. This ruling provides guidance on the time that a completed gift occurs when a nonstatutory stock option is transferred without consideration by the optionee to a family member.

Rev. Proc. 98-34, page 15.

Valuation of compensatory stock options. This procedure sets forth a methodology to value certain compensatory stock options for gift, estate, and generation-skipping transfer tax purposes.

### ADMINISTRATIVE

Notice 98-23, page 9.

This notice provides guidance regarding recent changes to the taxation of social security benefits under the U.S.-Canada income tax treaty.

Notice 98-25, page 11.

Election to treat trust as a United States person; domestic trust. This notice provides the procedures under section 1161 of the Taxpayer Relief Act of 1997, P.L. 105-34, 111 Stat. 788 (1997), for trusts that were in existence on August 20, 1996, and that were treated as United States persons on August 19, 1996, to elect to continue to be treated as United States persons notwithstanding section 7701(a)(30)(E) of the Code.

Finding Lists begin on page 22.

Announcement Relating to Court Decisions begins on page 4.

Index for January-April begins on page 24.



Department of the Treasury  
Internal Revenue Service

# Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our prod-

ucts and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency, and fairness.

## Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

# Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and proce-

dures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

## Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

## Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

## Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

## Part IV.—Items of General Interest.

With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis and are published in the first Bulletin of the succeeding semiannual period, respectively.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

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## Announcement Relating to Court Decisions

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in

certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern with some or all of those reasons. Nonacquiescence signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally,

will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a nonacquiescence indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The announcements published in the weekly Internal Revenue Bulletins are consolidated semiannually and annually. The semiannual consolidation appears in the first Bulletin for July and in the Cumulative Bulletin for the first half of the year, and the annual consolidation appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner ACQUIESCES in the following decisions:

**Golden Belt Telephone Cooperative v. Commissioner,**<sup>1</sup>  
108 T.C. 498 (1997)

**Paul A. Bilzerian v. United States,**<sup>2</sup>  
86 F.3d 1067 (11th Cir. 1996), **rev'g**  
887 F. Supp. 1509 (M.D. Fla. 1995),  
**remanded sub nom. Steffen v. United States**, 952 F. Supp. 779 (M.D. Fla. 1997)

<sup>1</sup> Acquiescence in result only relating to whether billing and collection services performed by a rural telephone cooperative on behalf of long-distance carriers constitute “communication services” as defined in Internal Revenue Code section 501(c)(12)(B).

<sup>2</sup> Acquiescence in result only relating to whether issuance of an erroneous refund following taxpayer’s payment of the original assessment revives that assessment to permit enforced collection of the amount erroneously refunded.

# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

## Section 86.—Social Security and Tier 1 Railroad Retirement Benefits

Notice 98-23 provides guidance regarding recent changes to the taxation of social security benefits under the U.S.-Canada income tax treaty. See Notice 98-23, page 9.

## Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

## Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

## Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

## Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-

term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

## Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

## Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

## Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

## Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

## Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

## Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-

term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

## Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

**Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate.** For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for May 1998.

## Rev. Rul. 98-23

This revenue ruling provides various prescribed rates for federal income tax purposes for May 1998 (the current month.) Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 98-23 TABLE 1  
Applicable Federal Rates (AFR) for May 1998

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-Term</i>				
AFR	5.50%	5.43%	5.39%	5.37%
110% AFR	6.06%	5.97%	5.93%	5.90%
120% AFR	6.63%	6.52%	6.47%	6.43%
130% AFR	7.18%	7.06%	7.00%	6.96%
<i>Mid-Term</i>				
AFR	5.69%	5.61%	5.57%	5.55%
110% AFR	6.27%	6.17%	6.12%	6.09%
120% AFR	6.84%	6.73%	6.67%	6.64%
130% AFR	7.42%	7.29%	7.22%	7.18%
150% AFR	8.60%	8.42%	8.33%	8.28%
175% AFR	10.06%	9.82%	9.70%	9.62%
<i>Long-Term</i>				
AFR	5.94%	5.85%	5.81%	5.78%
110% AFR	6.54%	6.44%	6.39%	6.36%
120% AFR	7.14%	7.02%	6.96%	6.92%
130% AFR	7.75%	7.61%	7.54%	7.49%

REV. RUL. 98-23 TABLE 2  
Adjusted AFR for May 1998

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	3.73%	3.70%	3.68%	3.67%
Mid-term adjusted AFR	4.30%	4.25%	4.23%	4.21%
Long-term adjusted AFR	5.05%	4.99%	4.96%	4.94%

REV. RUL. 98-23 TABLE 3  
Rates Under Section 382 for May 1998

Adjusted federal long-term rate for the current month	5.05%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	5.05%



REV. RUL. 98-23 TABLE 4

Appropriate Percentages Under Section 42(b)(2) for May 1998

Appropriate percentage for the 70% present value low-income housing credit	8.36%
Appropriate percentage for the 30% present value low-income housing credit	3.58%

REV. RUL. 98-23 TABLE 5

Rate Under Section 7520 for May 1998

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	6.8%
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## Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, page 5.

## Section 2511.—Transfers in General

26 CFR 25.2511-1: *Transfers in general.*  
(Also Section 2512; 25.2512-1.)

**Transfer of nonstatutory stock option.** This ruling provides guidance on the time that a completed gift occurs when a nonstatutory stock option is transferred without consideration by the optionee to a family member.

Rev. Rul. 98-21

### ISSUE

When is the transfer of a nonstatutory stock option (*i.e.*, a compensatory stock option that is not subject to the provisions of § 421 of the Internal Revenue Code) by the optionee to a family member, for no consideration, a completed gift under § 2511?

### FACTS

A is employed by Company. Company has one class of stock. Company has a stock option plan under which employees can be awarded nonstatutory stock op-

tions to purchase shares of Company's stock. These stock options are not traded on an established market. The shares acquired on the exercise of an option are freely transferable, subject only to generally applicable securities laws, and subject to no other restrictions or limitations.

Company grants to A, in consideration for services to be performed by A, a nonstatutory stock option to purchase shares of Company common stock. Company's stock option plan provides that the stock option is exercisable by A only after A performs additional services.

All options granted under Company's stock option plan expire 10 years from the grant date. The exercise price per share of A's option is the fair market value of one share of Company's common stock on the grant date. Company's stock option plan permits the transfer of nonstatutory stock options to a member of an optionee's immediate family or to a trust for the benefit of those individuals. The effect of such a transfer is that the transferee (after the required service is completed and before the option's expiration date) will determine whether and when to exercise the stock option and will also be obligated to pay the exercise price.

Before A performs the additional services necessary to allow A's option to be exercised, A transfers A's option to B, one of A's children, for no consideration.

### LAW AND ANALYSIS

Section 2501 imposes a tax on the transfer of property by gift by any indi-

vidual. The gift tax is not imposed upon the receipt of the property by the donee, is not necessarily determined by the measure of enrichment resulting to the donee from the transfer, and is not conditioned upon the ability to identify the donee at the time of the transfer. The tax is a primary and personal liability of the donor, is an excise upon the donor's act of making the transfer, is measured by the value of the property passing from the donor, and attaches regardless of the fact that the identity of the donee may not then be known or ascertainable. Section 25.2511-2(a) of the Gift Tax Regulations.

The gift tax applies to a transfer of property by way of gift, whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. Section 25.2511-1(a). For this purpose, the term property is used in its broadest and most comprehensive sense and reaches "every species of right or interest protected by law and having an exchangeable value." H.R. Rep. No. 708, 72d Cong., 1st Sess. 27 (1932); S. Rep. No. 665, 72d Cong., 1st Sess. 39, (1932); both reprinted in 1939-1 (Part 2) C.B. 476, 524. Some rights, however, are not property. See *e.g.*, *Estate of Howell v. Commissioner*, 15 T.C. 224 (1950) (non-vested pension rights were not property rights includible in gross estate under § 811(c) of the 1939 Code); *Estate of Barr v. Commissioner*, 40 T.C. 227 (1963) *acq.*, 1964-1 C.B. 4 (death benefits

payable at discretion of board of directors who usually but not always, agreed to payment, were in the nature of hope or expectancy and not property rights includible in gross estate for estate tax purposes).

Generally, a gift is complete when the donor has so parted with dominion and control over the property as to leave the donor no power to change its disposition, whether for the donor's own benefit or for the benefit of another. Section 25.2511-2(b).

In *Estate of Copley v. Commissioner*, 15 T.C. 17 (1950), *aff'd*, 194 F.2d 364 (7th Cir. 1952), *acq.*, 1965-2 C.B. 4, the petitioner entered into an antenuptial agreement in which the petitioner promised to give the future spouse a sum of money in consideration of the marriage and in lieu of all the spouse's marital rights in the petitioner's property. The agreement became legally enforceable under state law on the date of the marriage in 1931. The petitioner transferred part of the sum of money in 1936 and the rest in 1944. The court concluded that a gift tax would have been due in 1931 if there had been a gift tax law in effect at that time.

In Rev. Rul. 79-384, 1979-2 C.B. 344, a parent promised to pay a child \$10,000 if the child graduated from college. Rev. Rul. 79-384 holds that the parent made a gift on the day the child graduated from college, the date when the parent's promise became enforceable and determinable in value.

In Rev. Rul. 80-186, 1980-2 C.B. 280, a parent transferred to a child, for nominal consideration, an option to purchase real property for a specified period of time at a price below fair value. Rev. Rul. 80-186 holds that the transfer is a completed gift at the time the option is transferred provided the option is binding and enforceable under state law on the date of the transfer.

In the present case, Company grants to A a nonstatutory stock option conditioned on the performance of additional services by A. If A fails to perform the services, the option cannot be exercised. Therefore, before A performs the services, the rights that A possesses in the stock option have not acquired the character of enforceable property rights susceptible of transfer for federal gift tax purposes. A can make a gift of the stock option to B for federal gift tax purposes only after A has completed the additional required services because only upon completion of the services does the right to exercise the option become binding and enforceable. In the event the option were to become exercisable in stages, each portion of the option that becomes exercisable at a different time is treated as a separate option for the purpose of applying this analysis. In the event that B is a skip person (within the meaning of § 2613(a)), the generation-skipping transfer tax would apply at the same time as the gift tax. See Rev. Proc. 98-34, 1998-18, which sets forth a methodology to value certain compensatory stock options for

gift, estate, and generation-skipping transfer tax purposes.

## HOLDING

On the facts stated above, the transfer to a family member, for no consideration, of a nonstatutory stock option, is a completed gift under § 2511 on the later of (i) the transfer or (ii) the time when the donee's right to exercise the option is no longer conditioned on the performance of services by the transferor.

## DRAFTING INFORMATION

The principal author of this revenue ruling is Robert B. Hanson of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Melissa C. Liquerman on (202) 622-3120 (not a toll-free call).

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## Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, page 5.

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## Section 7872.—Treatment of Loans with Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, page 5.



## Part III. Administrative, Procedural, and Miscellaneous

### Taxation of Social Security Benefits Under U.S.-Canada Income Tax Treaty

#### Notice 98-23

This notice provides guidance, in a question and answer format, regarding recent changes to the taxation of cross-border social security benefits under the Convention Between the United States of America and Canada With Respect to Taxes on Income and on Capital Signed at Washington on September 26, 1980 as Amended by the Protocols Signed on June 14, 1983, March 28, 1984, March 17, 1995, and July 29, 1997 (the "Treaty"). For an overview of the changes, see Section I of this notice. For rules that apply to U.S. residents who receive Canadian social security benefits, see Section II. For rules that apply to Canadian residents who receive U.S. social security benefits, see Section III. For information concerning the Paperwork Reduction Act, see Section IV. For drafting information, see Section V.

#### I. OVERVIEW OF CHANGES

Paragraph 5 of Article XVIII of the Treaty provides rules that govern the taxation of U.S. social security benefits paid to Canadian residents and Canadian social security benefits paid to U.S. residents. These rules were extensively revised by the protocol signed on March 17, 1995 (the "1995 Protocol") and again by the protocol signed on July 29, 1997 (the "1997 Protocol").

Under the Treaty prior to amendment by the 1995 Protocol, each country had the exclusive right to tax social security benefits paid to its residents by the other country. The 1995 Protocol changed from a residence-based system to a source-based system, effective January 1, 1996. Under the 1995 Protocol, the country that paid benefits to residents of the other country had the exclusive right to tax the benefits.

The 1997 Protocol returned to a residence-based system under which social security benefits are taxable exclusively in the country where the recipient resides. The changes made by the 1997 Protocol are generally retroactive to January 1, 1996. However, benefits paid during 1996 and 1997 will not be subject to a higher

rate of tax than was imposed under the 1995 Protocol. In addition, as explained below, individuals who received benefits during 1996 and 1997 that would be subject to a lower rate of tax under the 1997 Protocol may be eligible for refunds.

#### II. U.S. RESIDENTS WHO RECEIVE CANADIAN BENEFITS

##### WHICH CANADIAN BENEFITS ARE COVERED?

The changes made by the 1997 Protocol affect the taxation of Old Age Security (OAS) pensions and Canada/Quebec Pension Plan (CPP/QPP) benefits.

##### HOW WERE MY BENEFITS TAXED DURING 1996 AND 1997?

Under the old rules (that is, the 1995 Protocol), Canadian social security benefits paid to U.S. residents during 1996 and 1997 were subject to a 25-percent Canadian withholding tax. However, Canada permitted U.S. recipients of Canadian benefits to file Canadian tax returns and pay tax at regular graduated rates on their net income. As a result, some U.S. recipients of Canadian social security benefits may have paid little or no Canadian tax on their benefits.

##### HOW WILL MY BENEFITS BE TAXED UNDER THE NEW RULES?

Under the new rules (that is, the 1997 Protocol), Canadian social security benefits paid to U.S. residents generally will be taxable, if at all, only by the United States. The benefits will be taxed at graduated rates on a net basis as if they were benefits paid under the U.S. Social Security Act. Thus, under section 86 of the Internal Revenue Code, the portion of the benefits that is taxable will depend on each recipient's income level. For more information on the rules that apply to benefits paid under the U.S. Social Security Act, see IRS Publication 915 (Social Security Benefits and Equivalent Railroad Retirement Benefits).

##### WHEN DO THE NEW RULES TAKE EFFECT?

The new rules must be applied to benefits received during 1998 and future

years. For 1996 and 1997, a U.S. resident who received Canadian social security benefits may choose to be taxed in the United States under the new rules or to remain taxable in Canada under the old rules.

##### WILL I HAVE TO PAY ANY ADDITIONAL TAX FOR 1996 OR 1997?

The United States and Canada have agreed that taxpayers' 1996 and 1997 benefits will not be subject to an increased rate of tax solely as a result of the 1997 Protocol. Therefore, U.S. recipients of Canadian social security benefits during 1996 or 1997 should not have to pay any additional tax unless there is some other factor that alters their tax liability.

##### AM I ENTITLED TO A REFUND OF CANADIAN TAX?

U.S. residents who received Canadian social security benefits during 1996 and 1997 on which Canadian tax was paid may be entitled to refunds. Taxpayers should calculate the amount of U.S. tax, if any, they would have been required to pay for 1996 and 1997 under the new rules. If this amount is less than the amount of Canadian tax paid, they generally are entitled to a refund of the Canadian tax. However, they will be required to report the benefits on U.S. returns (see below) and pay any U.S. tax that would be due.

##### WHAT SHOULD I DO TO OBTAIN MY REFUND?

During February 1998, Revenue Canada mailed letters to U.S. residents who received Canadian social security benefits during 1996 and 1997. Recipients of such letters should follow the instructions provided in the letter and submit the attached Election Form to Revenue Canada if they elect to be taxed in the United States. Revenue Canada will process the Election Forms and issue checks in the appropriate amount. Revenue Canada will notify the Internal Revenue Service of the Canadian benefits paid to the affected individuals and the amounts of the refunds issued.

Taxpayers who did not receive a letter, but believe they are entitled to a refund of

Canadian tax, should contact Revenue Canada by calling 1-800-661-7896, by sending a fax to 613-941-6905, or by writing to the International Tax Services Office, 2204 Walkley Road, Ottawa, Ontario K1A 1A8. Under the 1997 Protocol, taxpayers must apply for any refund of Canadian tax on or before December 16, 2000, which is three years from the date the 1997 Protocol entered into force.

#### **CAN I REVOKE MY ELECTION TO BE TAXED IN THE UNITED STATES INSTEAD OF CANADA?**

A taxpayer who receives a refund of Canadian tax may later determine that the amount of U.S. tax owed for 1996 and 1997 under the new rules is greater than the amount of Canadian tax that was originally paid. In this case, the taxpayer may contact Revenue Canada on or before December 16, 2000 to revoke the election and repay the Canadian tax. Revenue Canada will then advise the Internal Revenue Service that the taxpayer has revoked the election to be taxed in the United States.

#### **HOW SHOULD I REPORT BENEFITS FOR 1996 AND 1997 ON MY TAX RETURNS?**

Taxpayers who are not applying for refunds from Revenue Canada should not report the Canadian social security benefits received during 1996 and 1997 on U.S. federal income tax returns for 1996 and 1997. Taxpayers who are applying for refunds should report the benefits on U.S. returns as if the benefits had been paid under the U.S. Social Security Act. For more information on how to report benefits paid under the U.S. Social Security Act, see IRS Publication 915 (Social Security Benefits and Equivalent Railroad Retirement Benefits).

Taxpayers who apply for refunds and have not yet filed a 1996 or 1997 U.S. tax return must report the Canadian benefits on a 1996 or 1997 (as the case may be) U.S. tax return. Such a U.S. return must be filed even if a U.S. return would not otherwise be required and even if no U.S. tax is due. Taxpayers who were not previously required to file U.S. returns will be required to do so as a result of their election to be taxable in the United States. At the top of their return, taxpayers should

print or type the caption "CANADIAN TREATY—SOCIAL SECURITY."

Taxpayers who have already filed returns for 1996 and 1997 should file amended returns after they have received their refund checks from Revenue Canada and pay any U.S. tax that may be due. Interest and penalties generally will not be imposed if the additional U.S. tax (if any) is paid by April 15, 1999. At the top of their amended return, taxpayers should print or type the caption "CANADIAN TREATY—SOCIAL SECURITY."

Taxpayers will not be entitled to any foreign tax credit for the Canadian tax that will be refunded.

#### **HOW SHOULD I REPORT BENEFITS FOR 1998 AND FUTURE YEARS ON MY TAX RETURNS?**

Canadian social security benefits received during 1998 and future years should be reported as if they were paid under the U.S. Social Security Act. For more information on how to report benefits paid under the U.S. Social Security Act, see IRS Publication 915 (Social Security Benefits and Equivalent Railroad Retirement Benefits).

#### **III. CANADIAN RESIDENTS WHO RECEIVE U.S. BENEFITS**

##### **WHICH U.S. BENEFITS ARE COVERED?**

The changes made by the 1997 Protocol affect the taxation of monthly benefits under title II of the Social Security Act and tier 1 railroad retirement benefits.

##### **HOW WERE MY BENEFITS TAXED DURING 1996 AND 1997?**

Under the old rules (that is, the 1995 Protocol), U.S. social security benefits paid to Canadian residents during 1996 and 1997 were subject to a 25.5-percent U.S. withholding tax. This was a final payment of tax. Canadian recipients of U.S. social security benefits, regardless of their level of income, could not elect to be taxed in the United States on a net basis at graduated rates.

##### **HOW WILL MY BENEFITS BE TAXED UNDER THE NEW RULES?**

Under the new rules (that is, the 1997 Protocol), U.S. social security benefits

paid to Canadian residents generally will be taxable only by Canada. An amount equal to 85 percent of the benefits that are received will be subject to Canadian tax on a net basis as if the benefits were paid under the Canadian Pension Plan.

##### **WHEN DO THE NEW RULES TAKE EFFECT?**

The new rules must be applied to benefits received during 1998 and future years. For 1996 and 1997, Revenue Canada will determine whether it is more beneficial for taxpayers to be taxed in Canada under the new rules or to remain taxable in the United States under the old rules. More information is provided below.

##### **WILL I HAVE TO PAY ANY ADDITIONAL TAX FOR 1996 OR 1997?**

The United States and Canada have agreed that taxpayers' 1996 and 1997 benefits will not be subject to an increased rate of tax solely as a result of the 1997 Protocol. Therefore, Canadian recipients of U.S. social security benefits during 1996 or 1997 should not have to pay any additional tax unless there is some other factor that alters their tax liability.

##### **AM I ENTITLED TO A REFUND OF U.S. TAX?**

Canadian residents who received U.S. social security benefits during 1996 or 1997 on which U.S. tax was paid may be entitled to a refund. Revenue Canada will calculate the amount of Canadian tax, if any, that would have been due for 1996 and 1997 under the new rules. If this amount is less than the amount of U.S. tax paid, the taxpayer generally will be entitled to a refund of the excess amount. Revenue Canada will notify taxpayers who are entitled to refunds.

##### **WHAT SHOULD I DO TO OBTAIN MY REFUND?**

Taxpayers who believe they are entitled to a refund should not claim a refund from the Internal Revenue Service at this time. Revenue Canada has set up procedures for determining which Canadian residents are entitled to refunds. Revenue Canada will apply for and obtain the refunds from

the Internal Revenue Service on behalf of the affected individuals and will issue checks to them as soon as possible in the appropriate amount.

#### IV. PAPERWORK REDUCTION ACT

The collections of information contained in this notice have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1602.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this notice are in Sections II and III. This information is required to implement the 1997 Protocol. This information will be used to determine the amounts of refunds of U.S. tax to which certain Canadian residents are entitled and to notify the Internal Revenue Service as to the amounts of refunds of Canadian tax paid to certain U.S. residents. The collections of information are mandatory. The likely respondents are individuals.

The estimated total annual reporting burden is 25,000 hours.

The estimated annual burden per respondent varies from .25 hours to 1 hour, depending on individual circumstances, with an estimated average of .5 hours. The estimated number of respondents is 50,000.

The estimated annual frequency of responses is one time.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### V. DRAFTING INFORMATION

The principal authors of this notice are M. Grace Fleeman of the Office of Associate Chief Counsel (International) and Margaret M. Gavaghan of the Office of the Assistant Commissioner (International). For further information regarding this notice, contact Ms. Gavaghan on (202) 874-1550 (not a toll-free call).

## Election To Continue To Treat Trust as a United States Person

### Notice 98-25

#### SECTION 1. PURPOSE

This notice provides guidance regarding the election under § 1161 of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (1997) (Taxpayer Relief Act). Section 1161(a) provides that to the extent prescribed in regulations by the Secretary of the Treasury or his delegate, a trust that was in existence on August 20, 1996 (other than a trust treated as owned by the grantor under subpart E of part I of subchapter J of chapter 1 of the Internal Revenue Code of 1986), and that was treated as a United States person on August 19, 1996, may elect to continue to be treated as a United States person notwithstanding § 7701(a)(30)(E). The Internal Revenue Service and the Department of the Treasury will incorporate the guidance contained in this notice in regulations. Accordingly, trusts should follow the procedures set forth in this notice.

#### SECTION 2. BACKGROUND

Prior to the Small Business Job Protection Act of 1996, Pub. L. 104-188, 110 Stat. 1755 (1996) (SBJP Act), the status of a trust as domestic or foreign turned upon the subjective determination of whether the trust was more comparable to a resident or a nonresident alien individual. See Rev. Rul. 60-181, 1960-1 C.B. 257, citing *B.W. Jones Trust v. Commissioner*, 46 B.T.A. 531 (1942), *aff'd*, 132 F.2d 914 (4th Cir. 1943) (prior law).

Section 1907(a) of the SBJP Act amended § 7701(a)(30) and (31) of the Code to provide more objective criteria for determining the status of a trust. New § 7701(a)(30)(E) provides that a trust will be treated as a domestic trust if: (1) a court within the United States is able to exercise primary supervision over the administration of the trust, and (2) one or more United States persons<sup>1</sup> have the au-

thority to control all substantial decisions of the trust. New § 7701(a)(31) provides that a foreign trust is any trust that is not a domestic trust.

New § 7701(a)(30) and (31) apply in determining the status of a trust for taxable years beginning after December 31, 1996. A trust may, however, elect pursuant to § 1907(a)(3)(B) of the SBJP Act to have the new criteria apply to the first taxable year of the trust ending after August 20, 1996 (the date of enactment of the SBJP Act).

A trust that qualified as a domestic trust under prior law could fail to qualify as a domestic trust under new § 7701(a)(30)(E). Thus, solely due to the change in law, a domestic trust could become a foreign trust as of the first day of its first taxable year beginning after December 31, 1996. Such a change may have significant adverse tax consequences. A nongrantor trust whose status changed from domestic to foreign prior to August 5, 1997 (the effective date of the repeal of § 1491), was treated for purposes of § 1491 as having transferred, upon becoming a foreign trust, all of its assets to a foreign trust, and therefore may have been subject to the § 1491 excise tax. A nongrantor trust whose status changed from domestic to foreign on or after August 5, 1997 (the effective date of § 684) is treated as having transferred all of its assets to a foreign trust and must recognize as gain the excess of the fair market value of the property transferred over its adjusted basis under § 684.

To avoid the change from domestic to foreign status, a domestic trust needed to amend its provisions to meet the definition set forth in new § 7701(a)(30)(E) by the first day of its first taxable year beginning after December 31, 1996. To assist domestic trusts that may have had difficulty conforming to the new domestic trust criteria, the Service published Notice 96-65, 1996-2 C.B. 232. That notice permits a domestic trust in existence on August 20, 1996, to continue to file tax returns as a domestic trust for taxable years beginning after December 31, 1996, notwithstanding the status of the trust under new § 7701(a)(30)(E), if certain conditions are satisfied. See also § 1601(i)(4) of the Taxpayer Relief Act. To obtain the relief provided in Notice

<sup>1</sup>As originally enacted by the SBJP Act, new § 7701(a)(30)(E)(ii) required one or more United States fiduciaries to have the authority to control all substantial decisions of the trust. The Taxpayer Relief Act substituted the word "persons" for the word "fiduciaries."



96-65, a trust is required to: (1) initiate modification of the trust to conform to new § 7701(a)(30)(E) by the due date (including extensions) for filing the trust's income tax return for its first taxable year beginning after December 31, 1996; (2) complete the modification within two years of that date; and (3) attach a statement to the trust's income tax return, as described in Notice 96-65.

Subsequent to the publication of Notice 96-65, Congress enacted § 1161 of the Taxpayer Relief Act. Section 1161 allows a trust that was in existence on August 20, 1996 (other than a trust treated as owned by the grantor), and that was treated as a domestic trust on August 19, 1996, to elect to continue treatment as a domestic trust, regardless of the result of the application of new § 7701(a)(30)(E) to the trust.

### SECTION 3. TRUSTS ELIGIBLE TO MAKE THE ELECTION

#### .01 *Basic Rule.*

A trust that was in existence on August 20, 1996, and that was treated as a domestic trust on August 19, 1996, as provided in section 3.02, may elect to continue treatment as a domestic trust notwithstanding § 7701(a)(30)(E). This election is not available to a trust that was wholly-owned by its grantor under subpart E, part I, subchapter J, chapter 1, of the Code on August 20, 1996. (Wholly-owned grantor trusts may, however, follow the procedures in Notice 96-65.) The election is available to a trust if only a portion of the trust was treated as owned by the grantor under subpart E on August 20, 1996. If a partially-owned grantor trust makes the election, the election is effective for the entire trust. Also, a trust may not make the election if the trust has made an election pursuant to § 1907(a)(3)(B) of the SBJP Act to apply the new trust criteria to the first taxable year of the trust ending after August 20, 1996, because that election, once made, is irrevocable.

#### .02 *Determining Whether a Trust was Treated as a Domestic Trust on August 19, 1996*

##### (1) *Trusts Filing Form 1041 for the Taxable Year that Includes August 19, 1996*

For purposes of the election, a trust is considered to have been treated as a do-

mestic trust on August 19, 1996, if: (i) the trustee filed a Form 1041, U.S. Income Tax Return for Estates and Trusts, for the trust for the period that includes August 19, 1996 (and did not file a Form 1040NR, U.S. Nonresident Alien Income Tax Return, for that year); and (ii) the trust had a reasonable basis (within the meaning of § 6662) under the prior law for reporting as a domestic trust for that period.

##### (2) *Trusts Not Filing a Form 1041*

Some domestic trusts are not required to file Form 1041. For example, group trusts described in Rev. Rul. 81-100, 1981-1 C.B. 326, are not required to file Form 1041. Also, a domestic trust whose gross income for the taxable year is less than the amount required for filing an income tax return and that has no taxable income is not required to file a Form 1041. Section 6012(a)(4).

For purposes of the election, a trust that filed neither a Form 1041 nor a Form 1040NR for the period that includes August 19, 1996, will be considered to have been treated as a domestic trust on August 19, 1996, if the trust had a reasonable basis (within the meaning of § 6662) under prior law (i) for being treated as a domestic trust for that period and (ii) for filing neither a Form 1041 nor a Form 1040NR for that period.

### SECTION 4. PROCEDURE FOR MAKING THE ELECTION

#### .01 *Required Statement.*

To make the election, a statement must be filed with the Service in the manner and time described in this notice. The statement must be entitled "Election to Remain a Domestic Trust under § 1161 of the Taxpayer Relief Act of 1997," be signed under penalties of perjury by at least one trustee of the trust, and contain the following information:

(1) A statement that the trust is electing to continue to be treated as a domestic trust under § 1161 of the Taxpayer Relief Act of 1997;

(2) A statement that the trustee had a reasonable basis (within the meaning of § 6662) under prior law for treating the trust as a domestic trust on August 19, 1996. (The trustee need not explain the reasonable basis on the election statement);

(3) A statement either that the trust filed a Form 1041 treating the trust as a

domestic trust for the period that includes August 19, 1996, (and that the trust did not file a Form 1040NR for that period), or that the trust was not required to file a Form 1041 or a Form 1040NR for the period that includes August 19, 1996, with an accompanying brief explanation as to why a Form 1041 was not required to be filed; and

(4) The name, address, and employer identification number of the trust.

#### .02 *Filing the Required Statement with the Service*

Except as provided below, the trust must attach the statement to a Form 1041. The statement may be attached to either the Form 1041 that is filed for the first taxable year of the trust beginning after December 31, 1996 (1997 taxable year), or to the Form 1041 filed for the first taxable year of the trust beginning after December 31, 1997 (1998 taxable year). The statement, however, must be filed no later than the due date for filing a Form 1041 for the 1998 taxable year, plus extensions. The election will be effective for the 1997 taxable year, and thereafter, until revoked or terminated. If the trust has already filed a Form 1041 for the 1997 taxable year without the statement attached, the statement should be attached to the Form 1041 filed for the 1998 taxable year.

If the trust has insufficient gross income and no taxable income for its 1997 or 1998 taxable year, or both, and therefore is not required to file a Form 1041 for either or both years, the trust must make the election by filing a Form 1041 for either the 1997 or 1998 taxable year with the statement attached (even though not otherwise required to file a Form 1041 for that year). The trust should only provide on the Form 1041 the trust's name, name and title of fiduciary, address, employer identification number, date created, and type of entity. The statement must be attached to a Form 1041 that is filed no later than October 15, 1999.

If the trust files a Form 1040NR for the 1997 taxable year based on application of new § 7701(a)(30)(E) to the trust, and satisfies Section 3.01 of this notice, in order for the trust to make the election the trust must file an amended Form 1040NR return for the 1997 taxable year. The trust must note on the amended Form 1040NR that it is making an election under § 1161

of the Taxpayer Relief Act of 1997. The trust must attach to the amended Form 1040NR the statement required by this notice and a completed Form 1041 for the 1997 taxable year. The items of income, deduction and credit of the trust must be excluded from the amended Form 1040NR and reported on the Form 1041. The amended Form 1040NR for the 1997 taxable year, with the statement and the Form 1041 attached, must be filed with the Philadelphia Service Center no later than the due date, plus extensions, for filing a Form 1041 for the 1998 taxable year.

If a trust has made estimated tax payments as a foreign trust based on application of new § 7701(a)(30)(E) to the trust, but has not yet filed a Form 1040NR for the 1997 taxable year, when the trust files its Form 1041 for the 1997 taxable year it must note on its Form 1041 that it made estimated tax payments based on treatment as a foreign trust. The Form 1041 must be filed with the Philadelphia Service Center (and not with the service center where the trust ordinarily would file its Form 1041).

If a trust forms part of a qualified stock bonus, pension, or profit sharing plan, the election provided by this notice must be made by attaching the statement to the plan's annual return required under § 6058 (information return) for the first plan year beginning after December 31, 1996, or to the plan's information return for the first plan year beginning after December 31, 1997. The statement must be attached to the plan's information return that is filed no later than the due date for filing the plan's information return for the first plan year beginning after December 31, 1997, plus extensions. The election will be effective for the first plan year beginning after December 31, 1996, and thereafter, until revoked or terminated.

Any other type of trust that is not required to file a Form 1041 for the taxable year, but that is required to file an information return (for example, Form 5227) for the 1997 or 1998 taxable year must attach the statement to the trust's information return for the 1997 or 1998 taxable year. However, the statement must be attached to an information return that is filed no later than the due date for filing the trust's information return for the 1998 taxable year, plus extensions. The election will be effective for the 1997 taxable

year, and thereafter, until revoked or terminated.

A group trust under Rev. Rul. 81-100, 1981-1 C.B. 326, (and any other trust that is not described above and that is not required to file a Form 1041 or an information return) need not attach the statement to any return and should file the statement with the Philadelphia Service Center. The trust must make the election provided by this notice by filing the statement by October 15, 1999. The election will be effective for the 1997 taxable year, and thereafter, until revoked or terminated.

#### *.03 Failure to File the Statement in the Required Manner and Time.*

If a trust fails to file the statement in the manner or time provided in Section 4.01 and 4.02, the trustee may provide a written statement to the district director having jurisdiction over the trust setting forth the reasons for failing to file the statement in the required manner or time. If the district director determines that the failure to file the statement in the required manner or time was due to reasonable cause, the district director may grant the trust an extension of time to file the statement. Whether an extension of time is granted shall be in the sole discretion of the district director. However, the relief provided by this notice is not ordinarily available if the statute of limitations for the trust's 1997 taxable year has expired. Additionally, if the district director grants an extension of time, it may contain terms with respect to assessment as may be necessary to ensure that the correct amount of tax will be collected from the trust, its owners, and its beneficiaries.

### SECTION 5. REVOCATION OR TERMINATION OF THE ELECTION AND PUBLIC COMMENTS

Section 1161(a) of the Taxpayer Relief Act authorizes the Secretary to prescribe regulations regarding the election to remain a domestic trust. The regulations will incorporate the rules contained in this notice and provide guidance with respect to when the occurrence of certain significant changes in circumstances related to the trust will terminate the election (for example, changes in the trustees from United States persons to foreign persons). The regulations will also contain procedures for revoking the election. The Service and the

Treasury Department request comments on the rules in this notice and, in particular, the change in circumstances that would cause a termination of the election.

Comments should be submitted by June 30, 1998 to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, Attn: CC:DOM:CORP:R (Notice 98-25 CC:DOM:P&SI:2), Room 5226. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to: Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC, Attn: CC:DOM:CORP:R (Notice 98-25 CC:DOM:P&SI:2), Room 5226. Alternatively, taxpayers may submit comments electronically at

<http://www.irs.ustreas.gov/prod/taxregs/comments.html>

(the Service's internet site). All comments submitted will be available for public inspection and copying. Please identify the comments as relating to this Notice 98-25.

### SECTION 6. EFFECT OF THIS NOTICE ON NOTICE 96-65

A trust that otherwise qualifies for the relief under this notice has the option of proceeding under the provisions of Notice 96-65 or this Notice 98-25, or both. If the trustee has begun conforming a trust's provisions under Notice 96-65 to meet the definition set forth in new § 7701(a)-(30)(E), the trustee may discontinue conforming the trust's provisions to meet the new domestic trust criteria if the trustee proceeds under this Notice 98-25 instead of Notice 96-65.

### SECTION 7. EFFECTIVE DATE

This notice applies to an election made for the first taxable year of a trust beginning after December 31, 1996. The provisions of this notice will be incorporated into regulations that will be effective for taxable years beginning after December 31, 1996.

### PAPERWORK REDUCTION ACT

The collections of information contained in this notice have been reviewed and approved by the Office of Management and Budget for review in accordance with the Paperwork Reduction Act

(44 U.S.C. 3507) under control number 1545-1600.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this notice are in section 4 headed *Procedure for Making the Election*. This information is required by the IRS to assure compliance with the provisions of the Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997. The likely respondents are trusts.

The estimated total annual reporting burden is 250,000 hours.

The estimated average annual burden per respondent is 30 minutes.

The estimated number of respondents is 500,000.

The estimated annual frequency of responses is once.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal authors of this notice are Eliana Dolgoff and James A. Quinn of the Office of Assistant Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Ms. Dolgoff or Mr. Quinn on (202) 622-3060 (not a toll-free call). For further information about the international tax consequences of the election that is the subject of this notice contact Trina Dang of the Office of the Associate Chief Counsel (International) on (202) 622-3880.

Weighted Average Interest Rate Update

Notice 98-26

Notice 88-73 provides guidelines for determining the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987 and as further amended by the Uruguay Round Agreements Act, Pub. L. 103-465 (GATT).

The average yield on the 30-year Treasury Constant Maturities for March 1998 is 5.95 percent.

The following rates were determined for the plan years beginning in the month shown below.

Month	Year	Weighted Average	90% to 106% Permissible Range	90% to 110% Permissible Range
April	1998	6.67	6.00 to 7.07	6.00 to 7.34

Drafting Information

The principal author of this notice is Donna Prestia of the Employee Plans Division. For further information regarding this notice, call (202) 622-6076 between 2:30 and 3:30 p.m. Eastern time (not a toll-free number). Ms. Prestia's number is (202) 622-7377 (also not a toll-free number).

Renewable Electricity Production Credit, Publication of Inflation Adjustment Factor and Reference Prices for Calendar Year 1998

Notice 98-27

This notice publishes the inflation adjustment factor and reference prices for calendar year 1998 for the renewable electricity production credit under § 45(a) of the Internal Revenue Code. The 1998 inflation adjustment factor and reference prices are used in determining the availability of the credit. The 1998 inflation

adjustment factor and reference prices apply to calendar year 1998 sales of kilowatt-hours of electricity produced in the United States or a possession thereof from qualified energy resources.

BACKGROUND

Section 45(a) provides that the renewable electricity production credit for any tax year is an amount equal to the product of 1.5 cents multiplied by the kilowatt-hours of specified electricity produced by the taxpayer and sold to an unrelated person during the tax year. This electricity must be produced from qualified energy resources and at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service.

Section 45(b)(1) provides that the amount of the credit determined under § 45(a) is reduced by an amount that bears the same ratio to the amount of the credit as (A) the amount by which the reference price for the calendar year in which the sale occurs exceeds 8 cents bears to (B) 3 cents. Under § 45(b)(2), the 1.5 cents in

§ 45(a) and the 8 cents in § 45(b)(1) are each adjusted by multiplying the amount by the inflation adjustment factor for the calendar year in which the sale occurs.

Section 45(c)(1) defines qualified energy resources as wind and closed-loop biomass. Section 45(c)(3) defines a qualified facility as any facility owned by the taxpayer that originally is placed in service after December 31, 1993 (December 31, 1992, in the case of a facility using closed-loop biomass to produce electricity), and before July 1, 1999.

Section 45(d)(2)(A) requires the Secretary to determine and publish in the Federal Register each calendar year the inflation adjustment factor and the reference prices for the calendar year. The inflation adjustment factor and the reference prices for the 1998 calendar year were published in the Federal Register on April 1, 1998, (62 Fed. Reg. 15917).

Section 45(d)(2)(B) defines the inflation adjustment factor for a calendar year as the fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denomi-



nator of which is the GDP implicit price deflator for the calendar year 1992. The term "GDP implicit price deflator" means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the Department of Commerce before March 15 of the calendar year.

Section 45(d)(2)(C) provides that the reference price is the Secretary's determination of the annual average contract price per kilowatt hour of electricity generated from the same qualified energy resource and sold in the previous year in the United States. Only contracts entered into after December 31, 1989, are taken into account.

### INFLATION ADJUSTMENT FACTOR AND REFERENCE PRICES

The inflation adjustment factor for calendar year 1998 is 1.1240. The reference prices for calendar year 1998 are 4.95 cents per kilowatt-hour for facilities producing electricity from wind energy resources and 0 cents per kilowatt-hour for facilities producing electricity from closed-loop biomass energy resources. The reference price for electricity produced from closed-loop biomass, as defined in § 45(c)(2), is based on a determination under § 45(d)(2)(C) that in calendar year 1997 there were no sales of electricity generated from closed-loop biomass energy resources under contracts entered into after December 31, 1989.

### PHASE-OUT CALCULATION

Because the 1998 reference prices for electricity produced from wind and closed-loop biomass energy resources do not exceed 8 cents per kilowatt hour multiplied by the inflation adjustment factor, the phaseout of the credit provided in § 45(b)(1) does not apply to electricity produced from wind or closed-loop biomass energy resources sold during calendar year 1998.

### CREDIT AMOUNT

As required by § 45(b)(2), the 1.5¢ amount in § 45(a)(1) is adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1¢, such amount is

rounded to the nearest multiple of 0.1¢. Under the calculation required by § 45(b)(2), the renewable electricity production credit for calendar year 1998 is 1.7¢ per kilowatt hour on the sale of electricity produced from closed-loop biomass and wind energy resources.

### DRAFTING INFORMATION CONTACT

The principal author of this notice is David A. Selig of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Mr. Selig at (202) 622-3040 (not a toll-free call).

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*26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability. (Also Part I, Section 2512; Section 25.2512-1.)*

Rev. Proc. 98-34

### SECTION 1. PURPOSE

This revenue procedure sets forth a methodology to value for gift, estate, and generation-skipping transfer tax ("transfer tax") purposes certain compensatory stock options described in Section 3 of this revenue procedure. Taxpayers relying on this revenue procedure may use an option pricing model that takes into account on the valuation date specific factors that are similar to those established by the Financial Accounting Standards Board in Accounting for Stock-Based Compensation, Statement of Financial Accounting Standards No. 123, (Fin. Accounting Standards Bd. 1995), (FAS 123). The Internal Revenue Service will treat the value of a compensatory stock option as properly determined for transfer tax purposes, provided that the requirements of this revenue procedure are met.

### SECTION 2. BACKGROUND

Section 2512(a) of the Internal Revenue Code provides that, if a gift is made in property, the value of the property at the date of the gift is the amount of the gift.

Section 25.2512-1 of the Gift Tax Regulations provides that for gift tax purposes the value of property is the price at which the property would change hands between a willing buyer and a willing seller, nei-

ther being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

Section 2031(a) provides that the value of the gross estate is determined by including the value at the time of the decedent's death of all property, real or personal, tangible or intangible, wherever situated.

Section 20.2031-1(b) of the Estate Tax Regulations provides that the value of every item of property includible in a decedent's gross estate is its fair market value at the time of the decedent's death.

Section 2032(a) provides that the executor may elect to use an alternate valuation date. Under this election, the value of all property included in the gross estate generally is determined as of 6 months after the decedent's death. However, property distributed, sold, exchanged, or otherwise disposed of within 6 months after death must be valued as of the date of sale, exchange, or other disposition.

Section 2624(a) provides that, except as otherwise provided in Chapter 13, property is valued at the time of the generation-skipping transfer.

FAS 123 establishes financial accounting and reporting standards for stock-based employee compensation plans. Under FAS 123, the fair value of a stock option granted by a public entity is estimated using an option pricing model (for example, the Black-Scholes model or a binomial model) that takes into account as of the option grant date: (1) the exercise price of the option; (2) the expected life of the option; (3) the current price of the underlying stock; (4) the expected volatility of the underlying stock; (5) the expected dividends on the underlying stock; and (6) the risk-free interest rate for the expected term of the option.

FAS 123 generally requires a public entity to disclose in its financial statements for each year beginning after December 15, 1994, a description of the method and significant assumptions used during the year to estimate the fair value of stock options granted during the year, including the following weighted-average information: (1) expected life of the options; (2) expected volatility; (3) expected dividends; and (4) risk-free interest rate. (The foregoing is not a complete list of the disclosures required by FAS 123. For example, FAS 123 also requires financial state-

ment disclosure of the weighted-average exercise prices of options granted during the year.)

### SECTION 3. SCOPE

This revenue procedure applies only to the valuation for transfer tax purposes of nonpublicly traded compensatory stock options (that is, stock options that are granted in connection with the performance of services, including stock options that are subject to the provisions of § 421), on stock that, on the valuation date, is publicly traded on an established securities market. The options to which this revenue procedure applies are referred to herein as “Compensatory Stock Options.”

### SECTION 4. APPLICATION

.01 Taxpayers may determine the value of Compensatory Stock Options for transfer tax purposes by using a generally recognized option pricing model (for example, the Black-Scholes model or an accepted version of the binomial model) that takes into account as of the valuation date the following factors: (1) the exercise price of the option; (2) the expected life of the option; (3) the current trading price of the underlying stock; (4) the expected volatility of the underlying stock; (5) the expected dividends on the underlying stock; and (6) the risk-free interest rate over the remaining option term.

.02 In order to rely on this revenue procedure: (1) the taxpayer must use the factors determined in section 4.03 through 4.07 of this revenue procedure; (2) each of the factors used in applying the option pricing model must be reasonable (for this purpose, the use of the factors in section 4.03 through 4.07 of this revenue procedure will be deemed reasonable); (3) the option pricing model must be properly applied; (4) the company that granted the option must be subject to FAS 123 in preparing its financial statements for the fiscal year of the company that includes the valuation date; (5) the underlying stock must be common stock and must be the same stock for which the expected volatility and expected dividends were estimated by the company for purposes of FAS 123; and (6) no discount can be applied to the valuation produced by the option pricing

model (for example, no discount can be taken due to lack of transferability or due to the termination of the option within a specified number of days following termination of employment).

.03 Except as provided in section 4.04 of this revenue procedure, in determining the factor for the expected life of the option, taxpayers must use either (1) the maximum remaining term of the option on the valuation date (Maximum Remaining Term), or (2) the expected life of the option on the valuation date computed in accordance with this section (Computed Expected Life). The Maximum Remaining Term is the number of years rounded down to the nearest 1/10th of a year from the valuation date until the option's expiration date (assuming no condition or event occurs that would shorten the life of the option).

The Computed Expected Life is determined in the following manner:

Step one: Obtain the weighted-average expected life of options granted by the publicly traded company that, for purposes of complying with FAS 123, is disclosed in its financial statements for the fiscal year that includes the valuation date. (If, instead of disclosing a weighted-average expected life for options granted during the fiscal year, the company disclosed a method for computing the expected life of the options granted during the fiscal year, the taxpayer must compute the weighted-average expected life for the taxpayer's option using the method disclosed by the company.)

Step two: Divide the weighted-average expected life determined in step one by the number of years, rounded up to the nearest 1/10th of a year, from the date the option was granted (without regard to the application of § 424(h)(1)) until the option's expiration date (assuming no condition or event occurs that would shorten the life of the option).

Step three: Multiply the quotient obtained in step two by the Maximum Remaining Term. The resulting number rounded down to the nearest 1/10th is the Computed Expected Life expressed in years.

This calculation can be demonstrated by the following example. Assume that on September 1, 1998, A is granted a stock option from Company that will terminate on the earlier of the date 10 years

from the date of grant or the date 90 days after the termination of A's employment with Company. The option becomes fully exercisable 3 years from the date of grant. For the fiscal year that includes September 1, 2001, Company discloses in a footnote to its financial statements, in accordance with FAS 123, that the weighted-average expected life of stock options granted by the Company during the fiscal year is 6 years. On September 1, 2001, when A's option becomes fully exercisable, A makes a gift of a portion of the option. On September 1, 2001, A's option qualifies as a Compensatory Stock Option. For purposes of step one, the weighted-average expected life is 6 years, as disclosed by Company for purposes of complying with FAS 123 for the fiscal year that includes the valuation date. For purposes of step two, the weighted-average expected life of 6 years is divided by 10 years, the maximum term of A's option on the date the option was granted by Company. The resulting quotient is 0.6 (6 years divided by 10 years equals 0.6). For purposes of step three, the quotient in step two is multiplied by the Maximum Remaining Term to determine the Computed Expected Life. The result is 4.2 years (0.6 times 7 years equals 4.2 years).

.04 Taxpayers must use the Maximum Remaining Term (and may not use the Computed Expected Life) as the expected life of the option on the valuation date if one (or more) of the following conditions is present:

(1) the transferor of the option (or the decedent, in the case of a transfer at death) is not the person to whom the option being valued was granted by the company;

(2) except in the case of a transfer at death, the transferor is not an employee or director of the company on the valuation date;

(3) except in the case of the death or disability (within the meaning of § 22(e)(3)) of the transferor, the option being valued does not terminate within 6 months of termination of employment (or service as a director) of the transferor with the company;

(4) the terms of the option being valued permit the option to be transferred to, or for the benefit of, one or more persons other than either persons who are the natural objects of the transferor's bounty or a charitable organization;

(5) except in the case of the death of the transferor, the option being valued has an exercise price that is not fixed on the valuation date. The option does not have a fixed exercise price if, for example, the exercise price is determined by a formula the results of which might change after the valuation date. In addition, an option will be deemed not to have a fixed exercise price if the company issuing the option has repriced options (that is, directly or indirectly lowered the exercise price of outstanding compensatory stock options) within the 3-year period ending on the valuation date;

(6) except in the case of the death of the transferor, the option being valued has terms and conditions such that if all the options granted in the fiscal year of the company that includes the valuation date had the same terms and conditions, the weighted-average expected life for the year would have been more than 120% of the weighted-average expected life actually reported for the year; or

(7) the company is not required by FAS 123 to disclose an expected life of the options granted in the fiscal year of the company that includes the valuation date.

.05 In determining the factor for the expected volatility of the underlying stock, taxpayers must use the expected volatility of the underlying stock that, for purposes of complying with FAS 123, is disclosed in the financial statements of the publicly traded company for the fiscal year of the company that includes the valuation date.

.06 In determining the factor for the expected dividends on the underlying stock, taxpayers must use the expected dividends on the underlying stock that, for purposes of complying with FAS 123, is disclosed in the financial statements of the publicly traded company for the fiscal year of the company that includes the valuation date.

.07 In determining the factor for the risk-free interest rate, taxpayers must use the yield to maturity on the valuation date

of zero-coupon U.S. Treasury Bonds with a remaining term (as of the valuation date) nearest to the expected life of the option on the valuation date as determined in section 4.03 of this revenue procedure.

.08 Taxpayers utilizing this revenue procedure to value a Compensatory Stock Option for transfer tax purposes should indicate on the applicable gift, estate, or generation-skipping transfer tax return: "FILED PURSUANT TO REV. PROC. 98-34."

#### DRAFTING INFORMATION

The principal author of this revenue procedure is Robert B. Hanson of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Hanson on (202) 622-3050 or Melissa C. Liquerman on (202) 622-3120 (not toll-free calls).

## Part IV. Items of General Interest

### Notice of Public Hearing on Proposed Regulations

### Tax Treatment of Cafeteria Plans; Hearing

REG-243025-96

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed amendments that would provide guidance on the circumstances under which a cafeteria plan participant may revoke an existing election and make a new election during a period of coverage.

DATES: The public hearing will be held on Tuesday, May 5, 1998, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by Tuesday, April 14, 1998.

ADDRESSES: The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Requests to speak and outlines of oral comments should be submitted to the CC:DOM:CORP:R (REG-243025-96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-243025-96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 125 of the Internal Revenue Code. These regulations appeared in the **Federal Register** (62 F.R. 60196) on Friday, November 7, 1997.

The rules of §601.601 (a)(3) of the "Statement of Procedural Rules" (26 CFR

part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rule-making and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, April 21, 1998, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Cynthia E. Grigsby,  
*Chief, Regulations Unit,*  
*Assistant Chief Counsel (Corporate).*

(Filed by the Office of the Federal Register on March 18, 1998, 8:45 a.m., and published in the issue of the Federal Register for March 19, 1998, 63 F.R. 13383).

### Foundations Status of Certain Organizations

#### Announcement 98-36

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

*Former Public Charities.* The following organizations (which have been treated as

organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

Christians for Renewed Family Values, Inc., St. Petersburg, FL  
Christopher Area Youth Association, Christopher, IL  
Cincinnati Organization of Parents of Suzuki, Cincinnati, OH  
Circle B. Blessings Therapeutic Riding Center, Inc., Walkerton, IN  
Citizens Against Ravaging Our Environment, Inc., Clinton, MI  
Citizens for Positive Affirmation Inc., Jacksonville, FL  
Citizens for Tomorrows Future Inc., Ivanhole, NC  
Citizens Housing and Motivation Program-CHAMP, Houston, TX  
Citizens Island Bridge Company LTD, Lake Havasu, AZ  
Citizens Promoting Recycling, Rifle, CO  
Coast of Judea Inc., Whitesboro, NJ  
Coastal Area Home Providers Association, Inc., Savannah, GA  
Coastal Carolina HIV Care Consortium, Inc., Jacksonville, NC  
Cobb County Fire and Emergency Services Benevolent Fund, Marietta, GA  
Coffee Springs School District Foundation, Inc., Coffee Springs, AL  
Coker Volunteer Fire Department Inc., Coker, AL  
Colcord Little League Inc., Colcord, OK  
College Information Systems, Hickory, NC  
Collegians Activated To Liberate Life Call, Madison, WI  
Collierville Rotary Foundation, Collierville, TN  
Collirene Youth Recreation Inc., Tyler, AL  
Collision Ministries Inc., Franklin, TN  
Colony Library Foundation, The Colony, TX  
Colorado American Indian Foundation, Denver, CO  
Colorado Assistance Center Inc., Denver, CO  
Colorado Association for Healthcare Quality, Inc., Fort Collins, CO  
Colorado Childrens Center for the Cinematic & Performing Arts, Inc., Denver, CO



Colorado Foxes Recreational Soccer Club, Inc., Parker, CO  
 Colorado Senior Network Users Group, Colorado Springs, CO  
 Colorado Staff Development Council, Broomfield, CO  
 Colorado Teamsters Hispanic Caucus Joint Council 3, Denver, CO  
 Colorado Veterans for Housing Inc., Denver, CO  
 Colorado Young Lawyers Christmas in January Inc., Colorado Springs, CO  
 Columbia State U Inc., Metairie, LA  
 Columbus-Copapayo Sister City Project, Columbus, OH  
 Columbus Quincentennial Foundation Inc., Media, PA  
 Coming Together To Help Promotions, Philadelphia, PA  
 Comites Inc., Miami, FL  
 Commerce Enhancement Corporation, Shelbyville, KY  
 Committee for the March on Washington, Inc., Pittsburgh, PA  
 Community Access Centers Inc., Roanoke, VA  
 Community Access Television Inc., Fayetteville, AR  
 Community Action Services, Provo, UT  
 Community Help Inc., Columbia, SC  
 Community Housing Action Team Incorporated, Indianapolis, IN  
 Community Housing Assistance Program, Lebanon, OH  
 Community Housing Corporation, Southfield, MI  
 Community Impact Organization, Greenville, NC  
 Community Multi-Cultural Action Team, Jackson, TN  
 Community of Men, Chicago, IL  
 Community Redevelopment Inc., Atlanta, GA  
 Community Reinvestment Foundation Inc., Indianapolis, IN  
 Community Relations Council in Anderson County, Inc., Palestine, TX  
 Community Resource Council Polk Youth Institute, Inc., Raleigh, NC  
 Community Resources Inc., Thomasville, GA  
 Community Resources Unlimited Inc., Silver Spring, MD  
 Community Social Service Inc., Baton Rouge, LA  
 Community United Neighbors Against Drugs, Philadelphia, PA  
 Community Volunteer Training, Kansas City, MO  
 Community Works, Charlotte, NC  
 Community Youth Association, Nevada, TX  
 Compani, Richfield, UT  
 Compass Ministries Inc., Glendale, AZ  
 Compass Theatre Company, Denver, CO  
 Compassionate Heart Ministries Inc., Kansas City, MO  
 Comprehensive Care Center Memorial Fund, Houston, TX  
 Computer Awareness Foundation Inc., Edison, NJ  
 Computer Lifeskills Center Inc., Grand Rapids, MI  
 Comsoft, Clemson, SC  
 Concerned Citizens for a Better Community, Harvey, IL  
 Concerned Citizens of Central Texas Sentinel Communications, Waco, TX  
 Concerned Clergy Foundation Inc., Indianapolis, IN  
 Concerned Senior Citizens of Colorado, Inc., Fort Collins, CO  
 Concert Dance Ensemble, Waxahachie, TX  
 Concho Valley Regional Hospital Auxiliary, San Angelo, TX  
 Conneaut Education Foundation, Conneaut, OH  
 Connections for a Better World Inc., Chevy Chase, MD  
 Connor Moran Childrens Cancer Foundation, Inc., Tequesta, FL  
 Conquerors Quartet Ministries Incorporated, Evansville, IN  
 Conway Youth Sports Club Inc., Conway, AR  
 Cook County Council on Child Abuse Inc., Adel, GA  
 Cormagda Inc., Chicago, IL  
 Cornerstone Ministries Inc., Dodge City, KS  
 Corning Community Center Inc., Corning, AR  
 Coulters Mill Baptist Fellowship, Oreana, IL  
 Council for Urban Peace and Justice, Granville, OH  
 Council of Friends Groups of Akron, Akron, OH  
 Counseling Advocacy Resources Inc., Kokomo, IN  
 Count & Countess De Hoernle, Deerfield Beach, FL  
 Count It All Joy Inc., Seymour, IN  
 Country Heights Playground, Owensboro, KY  
 Country Kids Pre-School and Day, Pocahontas, AR  
 Court Appointed Special Advocates, Lewisville, TX  
 Coweta Communities in Schools Inc., Newnan, GA  
 Cowntown Opry, Fort Worth, TX  
 Cozad Youth Recreation, Cozad, NE  
 Craigs Divorced Kids, Craig, CO  
 Cranberry Township Athletic, Cranberry Twp, PA  
 Craven County Pirate Club, New Bern, NC  
 Create Inc., Tallahassee, FL  
 Creations Anew Inc., North Royalton, OH  
 Creative Learning Day-Care Inc., St. Martinville, LA  
 Creative Playground of Ft. Pierce, Ft. Pierce, FL  
 Creek County Sheriff Reserve, Supulpa, OK  
 Creole Chapter 43 NAWCC, Metairie, LA  
 Crime Stoppers of Carroll County, Huntingdon, TN  
 Crime Stoppers of Mayfield & Graves, Mayfield, KY  
 Crisis Pregnancy C A R E Center Inc., Harrodsburg, KY  
 Crisis Pregnancy Help-Line, Manistique, MI  
 Crisis Pregnancy Services of ADA, Ada, OK  
 Critical Incident Stress Debriefing, Winter Haven, FL  
 Critical Thought Development, Grand Rapids, MI  
 Cro-Aid Corp, Fort Lee, NJ  
 Croatian Council of Kansas City Inc., Kansas City, KS  
 Croation Youth of New Jersey Inc., Fort Lee, NJ  
 Crofton Park Production Company, Morristown, TN  
 Crossroad Farms Inc., Newark, DE  
 Crossroads Career Services Inc., Atlanta, GA  
 Crosstown Outreach Services, Detroit, MI  
 Crown Broadcasting Company, Pella, IA  
 Dreammakers International Education Inc., Columbus, OH  
 Dreamstreets Press Incorporated, Newark, DE

Driver of the Year Foundation Inc., Pittsburgh, PA	Fred Demayo Scholarship Fund Inc., Glenridge, NJ	Friends of the Topiary Park Inc., Columbus, OH
Drug and AIDS Prevention Among African-Americans Inc., Smithfield, NC	Freddie Moore Memorial Care Home Inc., Memphis, TN	Friends of Tijeras Pueblo, Tijeras, NM
Drug Free Housing Foundation Inc., Jacksonville, FL	Frederick County Sheriffs Office Citizen Advisory Committee Inc., Frederick, MD	Future Harvest, Jackson, MS
Drug Free Workplace Coalition of Palm Beach County Inc., West Palm Beach, FL	Frederick Knight Ministries Inc., Midfield, AL	Future Leaders for a Better Philadelphia Inc., Philadelphia, PA
Drug Watch International, Elmhurst, IL	Free Media Forum Inc., Atlanta, GA	Footprints Only Inc., Timonium, MD
Dublin Irish Celebration, Dublin, OH	Friends of Kennesaw Mountain National Battlefield Park Inc., Marietta, GA	For a Better World Inc., New Orleans, LA
Dubuque Area Youth Leadership Council, Dubuque, IA	Friends of Martin Memorial Library, Williamston, NC	Foresight Ministries Inc., Cascade, WI
Duke and Duchess Inc., Houston, TX	Friends of Mi Casa Inc., San Antonio, TX	Greenwood Superfund Oversight Coalition, Warrenton, VA
Dunbar Bulldog Academic and Athletic Boosters Inc., Lexington, KY	Friends of Nathan Goff House Inc., Clarksburg, WV	Greg Mausz Evangelistic Association Inc., Fayetteville, GA
Duncanville Soccer Association, Duncanville, TX	Friends of Northville Parks & Recreation, Northville, MI	Gresham Hills Inc., Florence, AL
Durand Farm Natural Preserve Inc., Decatur, GA	Friends of Q. A. Thorp, Chicago, IL	Gulf Coast—A Journal of Literature & Fine Arts, Houston, TX
Episcopal Investment Corporation, Houston, TX	Friends of the Blanchard Library Inc., Blanchard, OK	Gulf Coast Cycling Association, Houston, TX
Epsilon Tau Omega Endowment Fund, Greenville, SC	Friends of the Coast Corporation, New Braunfels, TX	Gulf Yachting Association Foundation Inc., Mobile, AL
Equestrian Challenge of Naples Inc., Naples, FL	Friends of the Colon Township Library, Colon, MI	Gunsight Religious Conference Center & Dude Ranch, San Antonio, TX
Equestrian Support Group, Hampton, AR	Friends of the Culinary Arts Foundation, Cincinnati, OH	Gurleys Transportation Service Inc., New Orleans, LA
Equip and Unify to Reach, Altamonte Springs, FL	Friends of the Danville Public Library, Danville, IL	Guru Nanak Nam Foundation, Santa Cruz, NM
Fous Inc., Decatur, GA	Friends of the Davis Program Inc., Columbus, OH	Gwinnett County Mounted Patrol, Lawrenceville, GA
Franciscan Service Program Incorporated, Covington, KY	Friends of the Holy Cross, Washington, DC	
Frank L. Rizzo Monument Committee, Philadelphia, PA	Friends of the Kenyon Area Ambulance Association, Kenyon, MN	
Franklin County Education Corporation, Meadville, MS	Friends of the Knox County Public Library Incorporated, Vincennes, IN	
Franz Jaegerstaetter Memorial Fund Inc., Marion, SD	Friends of the Lancaster Veterans Memorial Library, Lancaster, TX	
Frazier Freedom Neighborhood Association, Dallas, TX	Friends of the Marylou Reddick Public Library, Fort Worth, TX	
Fred A. Link III Memorial Scholarship Inc., Bridgeport, OH	Friends of the Sierra Leone Peoples Organization, Washington, DC	

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.



## Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it ap-

plies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C.—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.

E.O.—Executive Order.  
ER—Employer.  
ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contribution Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign Corporation.  
G.C.M.—Chief Counsel's Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.

PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.  
PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statements of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

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RR	Revenue Ruling
RP	Revenue Procedure
TD	Treasury Decision
CD	Court Decision
PL	Public Law
EO	Executive Order
DO	Delegation Order
TDO	Treasury Department Order
TC	Tax Convention
SPR	Statement of Procedural Rules
PTE	Prohibited Transaction Exemption

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